IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

OP.No. 35977 of 2000(G)

PETITIONER:

HARIKISHORE
U.D.CLERK
M.G.COLLEGE, THIRUVANANTHAPURAM

BY ADV. SRI.T.K.CHINNAN
SRI.B.K.PURUSHOTHAMAN

RESPONDENTS:

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1. STATE OF KERALA
REPRESENTED BY THE COMMISSIONER &
SECRETARY TO GOVERNMENT
HIGHER EDUCATION DEPARTMENT
THIRUVANANTHAPURAM

2. THE DIRECTOR OF COLLEGIATE EDUCATION
VIKAS BHAVAN, THIRUVANANTHAPURAM

3. UNIVERSITY OF KERALA
REPRESEMTED BY REGISTRAR
KERALA UNIVERSITY, THIRUVANANTHAPURAM

4. THE SECRETARY
N.S.S. COLLEGES CENTRAL COMMITTEE
PERUNNAI, CHANGANACHERRY -2

5. SMT. N. SUBHADRAMMA
U.D.CLERK
N.S.S. COLLEGE, CHERTHALA
ALLEPPY DISTRICT

BY ADV. SRI.M.K.CHANDRAMOHAN DAS,SC,KERALA UTY.
SRI.P.G.PARAMESWARA PANICKER (SR.)
SRI.P.GOPAL
SRI.S.P.ARAVINDAKSHAN PILLAY
SRI.M.RAJAGOPALAN NAIR, SC, KERALA UTY.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP.No. 35977 of 2000(G)

ORDER IN C.M.P NO. 61419 OF 2000 IN O.P NO. 35977 OF 2000

DISMISSED

28-5-2007 SD/- THOTTATHIL B. RADHAKRISHNAN,
JUDGE

PETITIONER'S EXHIBITS

Ext.P1: True copy of order No.Estt.E4/68906/96/Coll.Edn. dated 16-3-1996 issued by R2

Ext.P2: True copy of Certificate No. 8227/95 dated 11-9-1995 issued by Public Service Commission to the petitioner

Ext.P3: True copy of Order No. H/1132/98 dated 9-4-1998 issued by R4.

Ext.P4: True copy of (extract copy) of Seniority list issued by R4 by order No.H/6693/98 dated 5-10-1998

Ext.P5: True copy of Order No. H/440/95 dated 20-10-1995 issued by R4

Ext.P6: True copy of Representation submitted by petitioner before R4 dated 12-10-1998

Ext.P7: True copy of order No.H/6693/98 dated 27-1-1998 issued by R4.

Ext.P8: True copy of Representation submitted by petitioner before R2 on 1-3-2000

Ext.P9: True copy of order No.Estt.E4. 11271/2000/Coll.Edn.K.Dis Dated 6-10-2000

//True copy//

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.35977 of 2000-G

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Dated this the 28th day of May, 2007.

JUDGMENT

The petitioner and the 5th respondent were employed in the service of a corporate management represented by the 4th respondent. The service conditions of the employees in the colleges affiliated under the University of Kerala and belonging to that corporate management are governed by the relevant University Statutes.

2. The petitioner entered service as a last grade servant on 2-11-1991 and was promoted as a Lower Division Typist on 28-1-1993. Unlike in Government Service Rules, there was no provision in the University Laws providing for category change from Typists to Clerks in the service of the recognised colleges. On 28-6-1994, appropriate amendments were made to the University Laws whereby category change from Typists to Clerks also became applicable to such servants. Thereafter, the

petitioner was given the benefit of category change as L.D.Clerk on 16-12-1996 and thereafter, he was promoted as U.D.Clerk on 28-10-1997. The question of re-fixation of the date of entry into the category of L.D.Clerk and U.D.Clerk was considered and the petitioner was, thereafter, notionally allotted 25-1-1995 and 1-8-1997 as the respective dates of entry into LDC cadre and UDC cadre.

3. According to the petitioner, having been assigned 25-1-1995 as the notional date of entry into the LDC cadre, he is entitled to all consequential benefits, may be, excluding arrear of pay etc. On such premise, the petitioner contends that if 25-1-1995 is taken as the date of entry into the category of L.D.Clerk, he would have been normally entitled to be appointed as U.D.Clerk in preference to the 5th respondent who, though admittedly a senior, lacked the necessary test qualifications.

4. As of now, the 5th respondent is out of service.

5. The contesting corporate management has filed a counter-affidavit pointing out that the 5th respondent attained

the age of 50 years on 21-7-1995 and in terms of Statute 54 of the Kerala University First Statutes, 1979, she is entitled to permanent exemption from passing the obligatory departmental test as in the case of Government servants. Therefore, the 5th respondent, upon her attaining the age of 50 years on 21-7-1995, was entitled to be promoted as U.D.Clerk without insisting on her passing the obligatory departmental test.

6. The 5th respondent was promoted as U.D.Clerk only on 4-8-1995. On that day, she was admittedly above 50 years of age. This means, she had the permanent exemption from passing the obligatory departmental test. She was admittedly senior to the petitioner. The petitioner does not plead that any particular vacancy had arisen before 21-7-1995, the date on which the 5th respondent attained the 50 years of age. If that be so, the appointment of the 5th respondent in preference to the petitioner on 4-8-1995 as U.D.Clerk is flawless and the petitioner is not entitled to claim any benefit of seniority over the 5th respondent.

7. Incidentally, it is the case of the petitioner that after

his entry into the category of L.D.Typist on 28-1-1993, he had been repeatedly representing to the corporate management, as also to the other authorities for category change as L.D.Clerk and had also come to this Court with a writ petition seeking direction for consideration of his such request. On such premise, it is contended on behalf of the petitioner that the relevant law having been amended on 28-6-1994, the corporate management and the statutory authorities in the University ought to have ensured that the petitioner was given the benefit of category change as L.D.Clerk immediately after the amendment of the rules in which event, according to the petitioner, he would have obtained the benefit of earlier placement in the category of L.D.Clerk and earlier entitlement to vacancies which would have arisen in the category of U.D.Clerk much before. This argument would have a definite foundation, only if the petitioner has pointed out vacancies in the cadre of U.D.Clerk which happened to be filled by excluding him on account of any delay in considering the case for category change. No such vacancy is pointed out. On such premise, that contention also fails.

8. I may, incidentally, notice that under the provisions of the Kerala University Act, a Tribunal is constituted to adjudicate on service disputes and that Tribunal is constituted with District Judge holding the post of Tribunal. By such route, a judicial review at the hands of the High Court would become necessary only in cases where parties are dissatisfied by the decision of the Tribunal and reach this Court in statutory proceedings or otherwise under the scheme of that law. That is an alternate efficacious remedy, sufficient enough to deter this Court from exercising the discretionary jurisdiction under Article 226 of the Constitution against the decision of the corporate management, even if the Director of College Education had also looked into the matter. However, that ground is not being put against the petitioner since the matter has already been decided on merits as above and because of the passage of time after the admission of the writ petition in the year 2000.

In the result, the writ petition fails. The same is accordingly dismissed. No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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JUDGMENT

Dated: 28th May, 2007.